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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Frank Rodriguez, surviving father of Daniel Frank Rodriguez, individually and as co-personal representative of the Estate of Daniel Frank Rodriguez,

No. CV11-02073-PHX-DGC

## ORDER

### **Plaintiffs.**

VS.

## City of Phoenix, et al.,

### Defendants.

Defendant City of Phoenix (“the City”) moves to dismiss Plaintiff’s claims against it. Doc. 4. The motion has been fully briefed. Docs. 4, 5, 6. For the following reasons, the Court will deny the motion.<sup>1</sup>

## I. Background.

This action stems from Daniel Rodriguez's death following an altercation with Phoenix Police Department Officer Richard Chrisman on October 5, 2010. Plaintiff is Rodriguez's father. On October 4, 2011, he filed a complaint on behalf of himself and as "co-personal representative" of Rodriguez's estate. Doc. 1-1, at 4. The complaint raises claims against the City for wrongful death, failure to train or supervise, and loss of familial association.

<sup>1</sup> Plaintiffs' request for oral argument (Doc. 5) is denied because the issues are fully briefed and argument will not aid the Court's decision. *See Fed. R. Civ. P. 78(b).*

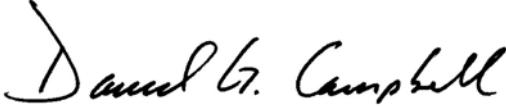
1 Before Plaintiff filed his complaint, Rodriguez's mother, Elvira Fernandez, filed a  
2 nearly identical lawsuit in this court. Doc. 4-1. That case is currently pending before  
3 Judge Martone. CV11-02001-FJM. Her complaint also raises claims, both individually  
4 and as "co-personal representative" of Rodriguez's estate, against the City for wrongful  
5 death, failure to train or supervise, and loss of familial association.

6 **II. Discussion.**

7 The City initially raises two grounds for dismissal: that Plaintiff's claims are  
8 barred because of the pending action before Judge Martone, and that Plaintiff's claims  
9 fail to meet the pleading standard articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).  
10 Doc. 4. Plaintiff responds that his wrongful death and survival claims should be  
11 consolidated, not dismissed, and that his claims satisfy *Iqbal*'s pleading standards.  
12 Doc. 5. In its reply, the City agrees with Plaintiff's request to consolidate and notes that  
13 Elvira Fernandez does not object to this arrangement. Doc. 6, at 1-2, n.1. It asks this  
14 Court to consolidate the case before Judge Martone with this case, join Elvira Fernandez  
15 as a required plaintiff for the survival claim, and order Plaintiff and Fernandez to elect  
16 one statutory plaintiff for the wrongful death claim and file an amended complaint. *Id.*  
17 at 4. The City does not pursue its pleading argument, noting that "[b]ecause Plaintiffs  
18 will have the opportunity to amend, there is no reason to continue litigating whether the  
19 allegations in the original complaint sufficiently state a claim upon which relief can be  
20 granted." *Id.* at 4, n.4.

21 The Local Rules of Civil Procedure for the District of Arizona provide that a  
22 motion to consolidate "shall contain the captions of all the cases sought to be  
23 consolidated, be filed in each case and shall be heard by the District Judge assigned the  
24 lowest case number." LRCiv 42.1(b). If the parties so desire, they must file a motion to  
25 consolidate in Judge Martone's court because that case has been assigned the lower case  
26 number.

1           **IT IS ORDERED** that Defendant City of Phoenix's motion to dismiss (Doc. 4) is  
2           **denied.**

3           Dated this 18th day of January, 2012.  
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7           David G. Campbell  
8           United States District Judge  
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